UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TONY D. SUDDETH, Plaintiff, v. MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant.	No. CV-08-0148-CI ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-Motions for Summary Judgment. (Ct. Rec. 17, 19.) Attorney Maureen J. Rosette represents Plaintiff; Special Assistant United States Attorney Leisa A. Wolfe represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 8.) After reviewing the administrative record and the briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment and directs entry of judgment for the Defendant.

Plaintiff applied for disability insurance benefits (DIB) and Supplemental Security Income (SSI) in May 2006. (Tr. 138-39.) He alleged disability due to back, neck, and hip pain, and a jaw injury, with an onset date of December 31, 2001. (Tr. 149.) Following a denial of benefits at the initial stage and on reconsideration, a hearing was held before Administrative Law Judge

(ALJ) Richard Say on July 26, 2007. (Tr. 44-67.) Plaintiff, who was represented by counsel, and vocational expert Dan McKiney testified. On October 22, 2007, ALJ Say denied benefits; review was denied by the Appeals Council after consideration of additional evidence submitted by Plaintiff.[1] (Tr. 4-7, 11-22, 32-42.) This appeal followed. Jurisdiction is appropriate pursuant to 42 U.S.C. § 405(g).

STANDARD OF REVIEW

In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the court set out the standard of review:

> The decision of the Commissioner may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.* 169 F.3d 595, 599 (9th Cir. 1999).

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[1] The additional evidence includes a letter from Plaintiff's representative and medical records dated August to December 2007, March and May 2000, and January to March 2008. (Tr. 7.) These records are part of the record on *de novo* review by this court. *Ramirez v. Shalala*, 8 F.3d 1449, 1452 (9th Cir. 1993); *Gomez v. Chater*, 74 F.3d 967, 971 (9th Cir. 1996). Remand for consideration of new evidence by the ALJ is appropriate only if it is clear the new evidence may change the ALJ's decision. *Mayes v. Massanari*, 276 F.3d 453, 462 (9th Cir 2001).

> The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, although deference is owed to a reasonable construction of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

SEQUENTIAL PROCESS

Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the requirements necessary to establish disability:

> Under the Social Security Act, individuals who are "under a disability" are eligible to receive benefits. 42 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any medically determinable physical or mental impairment" which prevents one from engaging "in any substantial gainful activity" and is expected to result in death or last "for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Such an impairment must result from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). The Act also provides that a claimant will be eligible for benefits only if his impairments "are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy . . . " 42 U.S.C. § 423(d)(2)(A). Thus, the definition of disability consists of both medical and vocational components.
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> In evaluating whether a claimant suffers from a disability, an ALJ must apply a five-step sequential inquiry addressing both components of the definition, until a question is answered affirmatively or negatively in such a way that an ultimate determination can be made. 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The claimant bears the burden of proving that [s]he is disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). This requires the presentation of "complete and detailed objective medical reports of h[is] condition from licensed medical professionals." *Id*. (citing 20 C.F.R. §§ 404.1512(a)-(b), 404.1513(d)).

STATEMENT OF FACTS

The facts of the case are set forth in detail in the transcript of proceedings, and are briefly summarized here. Plaintiff was 39

at the time of the hearing. (Tr. 48.) He had an 11th grade education, was not married, and lived alone in a house owned by his parents. (*Id.*) He testified he did his own household chores, including cooking and laundry, but he did not drive or shop because of lower extremity pain. (Tr. 50-51.) He stated he could lift a gallon of milk, sit for 10 to 15 minutes, stand for 10 minutes, walk slowly for 10 to 15 minutes and had trouble with his balance. (Tr. 53.) Plaintiff has past work experience as a metal cutter, demolition worker, industrial truck driver/ fork lift operator, metal finisher, hazardous material removal specialist, siding installer and construction laborer. (Tr. 61.) He testified he was no longer able to work due to fatigue and pain in his neck, feet and legs. (Tr. 56-58.)

ADMINISTRATIVE DECISION

The ALJ found Plaintiff was insured for DIB through December 31, 2006. At step one, he found Plaintiff had not engaged in substantial gainful activity. (Tr. 34.) At step two, he found Plaintiff had the severe impairments of degenerative disk disease of the lumbar spine and palmar fascia contracture in the right hand. (Tr. 43.) He found Plaintiff's diagnosed plantar fasciitis, neck sprain, jaw injury, and impetigo were not severe. (Tr. 35.) At step three, he found none of the impairments alone or in combination equaled one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (Listings). The ALJ found Plaintiff's subjective complaints regarding the severity of his symptoms were not entirely credible. (Tr. 37-38.) At step four, he determined Plaintiff had the residual functional capacity (RFC) to perform light work with

several postural and manipulation restrictions, but he could not perform his past relevant work. (Tr. 36, 40.) Considering vocational expert testimony, the ALJ found Plaintiff could perform other light and sedentary jobs in the national economy. The ALJ specifically identified jobs in the Packing and Filling Machine Operator and Product Inspector/Checker categories that Plaintiff could perform. (Tr. 41.) He concluded Plaintiff was not "disabled" as defined by the Social Security Act through the date of the decision. (*Id*.)

ISSUES

The question presented is whether there was substantial evidence to support the ALJ's decision denying benefits and, if so, whether that decision was based on proper legal standards. Plaintiff contends the ALJ erred when: (1) he found at step two that Plaintiff's diagnosed plantar fasciitis was not a severe impairment; (2) he discounted Plaintiff's testimony regarding the severity of his symptoms; and (3) he improperly relied on a non-examining medical opinion when assessing his RFC. (Ct. Rec. 18 at 11-19.)

DISCUSSION

A. Step Two: Severity of Plantar Fasciitis

To satisfy step two's requirement of a severe impairment, the claimant must prove the existence of a physical or mental impairment by providing medical evidence consisting of signs, symptoms, and laboratory findings; the claimant's own statement of symptoms alone will not suffice. 20 C.F.R. § 404.1508, 416.908. The step two inquiry is a *de minimis* screening device to dispose of groundless or frivolous claims. *Bowen v. Yuckert*, 482 U.S. 137, 153-154 (1987).

The Commissioner has passed regulations which guide dismissal of claims at step two. Those regulations state an impairment may be found to be "non-severe" *only* when evidence establishes a "slight abnormality" that has "no more than a *minimal effect* on an individual's ability to work." *Corrao v. Shalala*, 20 F.3d 943, 949 (9th Cir. 1994)(*citing Social Security Ruling (SSR)* 85-28). As explained in *SSR* 85-28:

> A determination that an impairment(s) is not severe requires a careful evaluation of the medical findings which describe the impairment(s) and an informed judgment about its (their) limiting effects on the individual's physical and mental ability(ies) to perform basic work activities; thus, an assessment of function is inherent in the medical evaluation process itself. At the second step of sequential evaluation, then, medical evidence alone is evaluated in order to assess the effects of the impairment(s) on ability to do basic work activities.

SSR 85-28. The regulations advise the adjudicator that "[g]reat care should be exercised in applying the not severe impairment concept." *Id*.

In determining whether a claimant has a severe impairment the ALJ evaluates the credible medical evidence submitted and explains the weight given to the opinions of accepted medical sources in the record. *Corrao*, 20 F.3d at 950. The regulations distinguish among the opinions of three types of accepted medical sources: (1) sources who have treated the claimant; (2) sources who have examined the claimant; and (3) sources who have neither examined nor treated the claimant, but express their opinion based upon a review of the claimant's medical records. 20 C.F.R. §§ 404.1527, 416.927. A treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more

weight than a non-examining reviewing or consulting physician's opinion. *Benecke v. Barnhart,* 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). "As is the case with the opinion of a treating physician, the Commissioner must provide 'clear and convincing' reasons for rejecting the uncontradicted opinion of an examining physician." *Lester*, 81 F.3d at 830 (citation omitted). If the opinion is contradicted, it can only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record. *Andrews,* 53 F.3d at 1043. The testimony of a non-examining medical expert by itself cannot be considered substantial evidence that supports the rejection of an examining physician. *Lester*, 81 F.3d at 831. Further, a non-examining state agency physician's findings of fact must be treated as expert opinion evidence of non-examining sources by the ALJ, who can give weight to these opinions only insofar as they are supported by evidence in the case record. The ALJ cannot ignore these opinions and must explain the weight given. *SSR* 96-6p.

In addition to acceptable medical sources, the ALJ must consider opinions from other sources, such as nurse practitioners (ARNP) and certified physician assistants (PA-Cs). 20 C.F.R. §§ 404.1513(d), 416.913(d). Other source testimony can never establish a diagnosis or disability absent corroborating competent medical evidence. *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). More weight generally is given to the opinions of an accepted medical source than that of an other source. *Gomez*, 74 F.3d at 970-71. However, the ALJ is required to "consider observations by [other] sources as to how an impairment affects a claimant's ability

to work." *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). Pursuant to *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993), an ALJ is obligated to give reasons "germane" to "other source" testimony before discounting it. Further, if there is evidence of an impairment, observations regarding functional limitations caused by that impairment must be considered and may be given weight, depending on the relevant facts, including the other source's qualifications, how long the other source has worked with Plaintiff and how consistent her opinions are with other evidence. *See also SSR* 06-03p.

Here, Plaintiff submitted treatment records from the Community Health Association of Spokane (CHAS), and reports from examining physicians. Plaintiff claims he was diagnosed with plantar fasciitis in May 2006 (Tr. 229); however, the cited diagnosis is included in reports by Barbara Tritt, PA-C, an "other source." Under the Regulations, her diagnosis alone cannot establish an impairment. *Nguyen*, 100 F.3d at 1467. In addition, Plaintiff references the diagnosis by neurologist Robert Rutherford, M.D., of "probable plantar fasciitis bilaterally" in August 2007. (Tr. 263.) A diagnosis of plantar fasciitis also is found in a July 2007 report from Dr. Charles Brondos, examining neurologist. (Tr. 279.) The ALJ thus properly found that Plaintiff was diagnosed with plantar fasciitis, (Tr. 35), but the a finding of severity requires more. The credible medical evidence must also show that the impairment (1) causes functional limitations that have more than a minimal effect on Plaintiff's ability to do work activities, and (2) last more than 12 months. 20 C.F.R. §§ 404.1509, 416.909; *SSR* 96-3p.

As found by the ALJ, Dr. Rutherford examination revealed Plaintiff's ankle and foot had full range of motion and little tenderness "when Plaintiff was distracted." (Tr. 35, 263.) The doctor also noted Plaintiff's "unusual and subjectively severe symptoms," and ordered a bone scan to rule out a bone abnormality. (Tr. 263.) The bone scan "suggested" plantar fasciitis and changes consisted with degenerative changes; hence, Dr. Rutherford's diagnosis of "probable" plantar fasciitis. (Tr. 264.) Other objective medical evidence, including 2008 chart notes and a neurology report submitted to the Appeals Council, indicates Plaintiff had decreased sensation in his feet, but minimal functional limitations were observed: *e.g.*, Plaintiff had a full range of motion in both feet, intact balance and heel/toe walking, no limp, normal gait and coordination; completely normal strength in upper and lower extremities, and normal limb tone. (Tr. 97-98, 101, 232, 285.) Extensive laboratory studies conducted in 2008, including an electrodiagnostic study of lower extremities, revealed no significant abnormalities. (Tr. 73-76.)

In January 2008, examining neurology specialist Dr. Stephen Carlson found Plaintiff's examination "fairly reassuring" and commented that Plaintiff's "complaints were overwhelming, but the exam findings are underwhelming." (Tr. 98.) Further, treatment of Plaintiff's foot condition appears to be limited to physical therapy, which Plaintiff refused to continue beyond three visits, in spite of some reported improvement and good rehabilitation potential. (Tr. 266-72.) The amount of treatment for an impairment is "an important indicator" of symptom severity. 20 C.F.R. §§

404.1529(c)(3), 416.929(c)(3).

As discussed above, credible medical evidence is evaluated at step two to assess the effects of an impairment; subjective complaints alone cannot establish severity. *SSR* 85-28. The ALJ's step two determination that the objective medical evidence related to Plaintiff's plantar fasciitis diagnosis showed no more than a minimal effect on functional abilities is well supported by the entire record. The ALJ did not err at step two. Further, Plaintiff's complaints of pain and limitations allegedly caused by plantar fasciitis were properly considered in the ALJ's credibility determination and at step four and step five, in combination with severe impairment symptoms. *SSR* 96-3p; *SSR* 96-7p; (Tr. 35, 37-41). Thus, the alleged error, if any, at step two was non-prejudicial and, therefore, harmless. *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005).

B. Credibility

Plaintiff argues the ALJ did not give specific reasons to reject his testimony that his limited abilities to sit, stand, walk and lift and carry rendered him totally disabled. (Ct. Rec. 18 at 16.) This argument is unpersuasive because the ALJ made extensive legally sufficient findings in support of his credibility determination. (Tr. 38-39.)

It is well-settled that credibility determinations are the sole province of the adjudicator. *Richardson,* 402 U.S. at 400; *Thomas v. Barnhart,* 278 F.3d 947, 959 (9th Cir. 2002); *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989). However, when an ALJ finds a claimant's statements as to the severity of impairments, pain and limitations

are not credible, the ALJ must make a credibility determination with findings sufficiently specific to permit the court to conclude the ALJ did not arbitrarily discredit claimant's allegations. *Thomas*, 278 F.3d at 958-959*; Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th Cir. 1991) (en banc). Nonetheless,

> An ALJ cannot be required to believe every allegation of disabling pain, or else disability benefits would be available for the asking, a result plainly contrary to 42 U.S.C. § 423 (d)(5)(A). . . . This holds true even where the claimant introduces medical evidence showing that he has an ailment reasonably expected to produce some pain; many medical conditions produce pain not severe enough to preclude gainful employment."

Fair, 885 F.2d at 603. If there is no affirmative evidence that the claimant is malingering, the ALJ must provide "clear and convincing" reasons for rejecting the claimant's allegations regarding the severity of symptoms. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). The ALJ engages in a two-step analysis in deciding whether to admit a claimant's subjective symptom testimony. *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996).

Under the first step, the ALJ must find the claimant has produced objective medical evidence of an underlying "impairment," and that the impairment, or combination of impairments, "could reasonably be expected to produce pain or other symptoms." *Cotton v. Bowen*, 799 F.2d 1403, 1405 (9th Cir. 1986). Once the *Cotton* test is met, the ALJ must evaluate the credibility of the claimant. In addition to ordinary techniques of credibility evaluation, the ALJ may consider the following factors when weighing the claimant's credibility: the claimant's reputation for truthfulness; inconsistencies either in his allegations of limitations or between

his statements and conduct; daily activities and work record; and testimony from physicians and third parties concerning the nature, severity, and effect of the alleged symptoms. *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997); *Fair*, 885 F.2d 597 at n.5. The ALJ may also consider an unexplained failure to follow treatment recommendations and testimony by the claimant "that appears less than candid." *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). If the ALJ's credibility finding is supported by substantial evidence in the record, "the court may not engage in second-guessing." *Thomas,* 278 F.3d at 959; *Fair*, 885 F.2d at 604.

Here, the ALJ noted Plaintiff's allegations that he could not work due to muscle constriction over his entire body and that he spends 95 percent of his day lying down. (Tr. 37.) Further, he specifically referenced Plaintiff's testimony that he could lift less than a gallon of milk, and sit, stand or walk for 10-15 minutes at a time. (Tr. 39.) Nonetheless, based on his interpretation of the evidence, the ALJ concluded that these assertions were not entirely credible. (Tr. 37.) Significantly, the ALJ found, and the record shows, that physical examinations and recorded observations by medical specialists consistently show Plaintiff had intact gait, balance and coordination, with no evidence of muscle atrophy in upper or lower extremities, indicating he was able to sit, stand and walk. (Tr. 38.) The ALJ specifically cited objective imaging results and treatment notes from examining medical sources and Plaintiff's primary care provider that indicated Plaintiff had the physical ability to perform light work. (Tr. 38; *see, e.g.*, Tr. 223, 229-32, 236-38, 287.) Although an adjudicator may not reject

a claimant's extreme symptom complaints solely on a lack of objective medical evidence, the medical evidence is a relevant factor to consider. *SSR* 96-7p. Further, the ALJ's reasoning that medical evidence did not establish total disability is supported by neurology reports and imaging results in evidence submitted to the Appeals Council. (Tr. 97-101.)

In addition to a lack of objective medical evidence, the ALJ gave other "clear and convincing" reasons to discount Plaintiff's testimony, including: observations by examining specialists and his physical therapy provider that his symptoms were "unusual" and unexplained by test results; the use of conservative treatment; and Plaintiff's failure to follow through with treatment recommendations;[2] Plaintiff's self-reported activities of daily living that contradicted his claim of being bed-ridden 95 percent of the day; and inconsistencies between treatment notes and Plaintiff's testimony. (Tr. 39, 263, 266.) The ALJ reasonably found the extremity of the symptoms described by Plaintiff at the hearing was "implausible" and was not reflected in treatment notes.[3] (Tr. 38-39.)

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[2] Evidence of conservative treatment and failure to follow through with recommended conservative treatment are legally sufficient reasons to discount Plaintiff's statements regarding the severity of an impairment. *See Tommasetti*, 533 F.3d at 1039*; Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007) (citation omitted).

[3] The ALJ erroneously referenced Plaintiff's ability to sit through the entire hearing as a reason to discredit his claim that he could only sit for 10-15 minutes. As noted in Ninth Circuit law,

These specific reasons are sufficiently "clear and convincing." Thomas, 278 F.3d at 958-59. Further, the ALJ's interpretation of the evidence is rationally supported by the entire record; therefore, the court may not second guess the Commissioner's credibility determination. *Tackett*, 180 F.3d at 1097.

C. RFC Determination

Plaintiff contends his impairments render him totally unable to perform work activities. (Ct. Rec. 18 at 156.) He argues the ALJ erroneously relied on the opinions of a non-examining physician in his final RFC determination, which is as follows:

> [C]laimant has the residual functional capacity to perform the full range of light work. The clamant can lift 20 pounds occasionally and frequently lift or carry 10 pounds. The clamant can sit for six hours and stand or walk for six hours in an eight-hour workday. He can occasionally stoop, crouch, crawl, kneel, balance, or climb. He can occasionally use his right dominant thumb and hand for fingering. The claimant is afflicted with symptoms from various sources including mild to moderate chronic pain which is of sufficient severity to be noticeable to him at all times, but he would be able to remain attentive and responsive in a work setting and could carry out normal work assignments satisfactorily. The clamant takes medication for relief of his symptoms,

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Gallant v. Heckler, 753 F.2d 1450, 1455 (9th Cir. 1984), it is error to rely on the "squirm" test; thus, to the extent the credibility findings reflect the ALJ's personal observation of Plaintiff during the hearing, those findings are error. However, such error may not render the entire decision improper where, as here, there are other legally sufficient reasons included in the credibility findings. *See Morgan,* 169 F.3d at 600 *(citing Sellard v. Shalala*, 37 F.3d 1506 (9th Cir. 1994); *Nyman v. Heckler*, 779 F.2d 528, 531 (9th Cir. 1985).

> but the medications do not prevent him from functioning at the levels indicated, and he would remain reasonably alert to perform required functions presented by his work setting. The clamant would need to change position about every 45-60 minutes to relieve symptoms.

(Tr. 36.) In making these findings, the ALJ gave "significant weight" to the October 2006 RFC affirmed by agency reviewing physician, Norman Staley, M.D. (Tr. 39, 250-59.) Plaintiff contends the ALJ improperly rejected the opinions of Dr. Brondos (examining physician) and PA-C Tritt in favor of Dr. Staley's opinions. (Ct Rec. 18 at 17-18.)

The opinion of a non-examining physician may be accepted as substantial evidence if it is supported by other evidence in the record and is consistent with it. *Andrews*, 53 F.3d at 1043; *Lester*, 81 F.3d at 830-31. The opinion of a non-examining physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion of either an examining physician or a treating physician. *Lester*, 81 F.3d at 831 (*citing Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4 (9th Cir. 1990)). Cases have upheld rejection of an examining or treating physician based in part on the testimony of a non-examining medical source; but those cases have also found reasons to reject the opinions of examining and treating physicians, independent of the non-examining doctor's opinion. *Lester*, 81 F.3d at 831 (*citing Magallanes v. Bowen,* 881 F.2d 747, 751-55 (9th Cir. 1989) (reliance on laboratory test results, contrary reports from examining physicians); *Roberts v. Shalala*, 66 F.3d 179 (9th Cir. 1995) (rejection of examining psychologist's functional assessment which conflicted with his own written report and test results)). Thus, case law requires substantial evidence (more than

a mere scintilla, but less than a preponderance), independent of the non-examining physician opinion which supports the rejection of contrary conclusions by examining or treating physicians. *Andrews*, 53 F.3d at 1039.

Plaintiff was referred by his primary care provider to Dr. Brondos in July 2007. Dr. Brondos evaluated Plaintiff specifically to rule out ALS, multiple sclerosis and neuropathy. (Tr. 275, 279-280.) In his one and a half page narrative report he found "no supersensitivity over the feet by examination. Vibration is intact at the ankle." (Tr. 280.) Examination also revealed normal coordination and symmetric motor strength in upper and lower extremities. (*Id.*) Further, in his form report, Dr. Brondos noted all areas evaluated were "within normal limits." (Tr. 276.) He identified "neuropathy" as the only limiting diagnosis, and gave it a severity rating of "moderate." However, on the form report, he opined Plaintiff's overall work level was "sedentary." (Tr. 277.) The ALJ gave the check-box form of Dr. Brondos's report little weight, because it (1) was in an unexplained check-box format; (2) was based on a single examination; (3) was based on self-report "in a secondary gain context"; and (4) did not contain an explanation of the basis for the conclusion. (Tr. 40.) These are specific and legitimate reasons for rejecting a contradicted examining physicians' opinions, and they are fully supported the record as discussed above. *See, e.g., Crane v. Shalala*, 76 F.3d 251, 253, (9th Cir. 1996). It is further noted on independent review that Dr. Brondos's narrative summary of his brief physical examination are consistent with other medical evidence in the record and, therefore,

were unrejected by the ALJ. (Tr. 280.)

Regarding Ms. Tritt's opinion that Plaintiff is "severely limited" found on a form report (Tr. 226), the ALJ fully discussed the weight given her "other source" opinion. 20 C.F.R. §§ 404.1513(d); 416.913(d). (Tr. 40.) He correctly noted the Commissioner is required to consider observations by "other sources" or lay witnesses regarding the effects of impairments on a claimant's ability to work. *Sprague*, 812 F.2d at 1232. Moreover, an ALJ is obligated to give reasons "germane" to a lay witness's testimony before discounting it. *Dodrill*, 12 F.3d at 919. It is appropriate to discount lay testimony if it conflicts with other substantial medical evidence. *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984). The ALJ gave Ms. Tritt's evaluation form findings little weight, noting they were (1) not supported by other objective medical evidence in the record; (2) based on Plaintiff's unreliable self-report of symptoms and limitations; and (3) inconsistent with her own treatment notes. (Tr. 40.) These are specific, germane reasons for discounting Ms. Tritt's conclusory findings. Further, excepting the self-reported and properly discounted symptoms, Ms. Tritt's observations and findings on examination recorded in treatment notes are reasonably consistent with the Dr. Staley's RFC assessment, and the ALJ's final RFC determination. The ALJ properly evaluated the medical evidence and his RFC determination is reasonably supported by the entire record on review. Accordingly,

IT IS ORDERED:

1. Plaintiff's Motion for Summary Judgment **(Ct. Rec. 17)** is

DENIED.

2. Defendant's Motion for Summary Judgment dismissal **(Ct. Rec. 19)** is **GRANTED.**

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. The file shall be **CLOSED** and judgment entered for **Defendant**.

DATED May 19, 2009.

S/ CYNTHIA IMBROGNO
UNITED STATES MAGISTRATE JUDGE